

REMARKS

Claims 1-49 were originally filed in the present application. In the Restriction Requirement mailed May 26, 2004, the Examiner restricted claims 1-49 into the following Groups:

Groups 1-145: Claims 1-48, drawn to a method of detecting the presence of a target nucleic acid;

Groups 146-2208: Claims 46-48, drawn to a kit comprising selected oligonucleotides; and

Group 2209: Claim 49, drawn to a method of detecting 2 or more target nucleic acids.

(Restriction Requirement, page 2).

Groups 1-145 are drawn to a method of detecting the presence of a target nucleic acid by using an enzyme comprising residues 300-650 of SEQ ID NO:1 or the 144 sequences listed in Claim 34, classified in class 435, subclass 6. The group number corresponds to the SEQ ID NO. (Restriction Requirement, page 2).


Claims 46-48 are listed in Groups 1-145 (methods) and in Groups 146-2208 (kits). As these claims are drawn to kits rather than methods, it is Applicants' belief that the Examiner intended that these claims be only in Groups 146-2208, and that Groups 1-145 contain Claims 1-45. The Applicants herein elect without traverse to prosecute the Claims of Groups 1, comprising Claims 1-45. Applicants herein cancel Claims 46-49 without prejudice, reserving the right to prosecute the same or similar claims in one or more divisional applications.

Additionally, the Examiner alleges that, "Claims 1-48 are generic to a plurality of disclosed patentably distinct species comprising the oligonucleotides of SEQ ID NO: 709-2640, 169-211 and 619-706. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed." (Restriction Requirement, page 2). SEQ ID NOs: 709-2640, 169-211 and 619-706 are recited in Claims 34, 35, 37, 38, 47 and 48. In order to further business interests and to advance prosecution of the present application, Applicants herein cancel without prejudice Claims

34, 35, 37, 38, reserving the right to prosecute the same or similar claimed in the future. Claims 46-48 are canceled for reasons described above. The cancellation of Claims 34, 35, 37, 38, 47 and 48 removes all reference to the species recited by the Examiner, and renders a species election moot.

Claims 1-33, 36 and 41-45 are pending and under examination following entry of Applicants' response to the outstanding Restriction Requirement and Claim amendments. If a telephone interview would aid in the prosecution of this application, Applicants encourage the Examiner to call the undersigned collect at (608) 218-6900.

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